

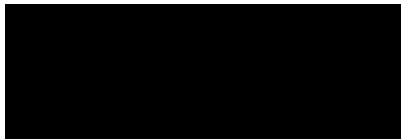
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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
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U.S. Citizenship
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Services

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APR 13 2004

FILE:



Office: NEWARK, NEW JERSEY

Date:

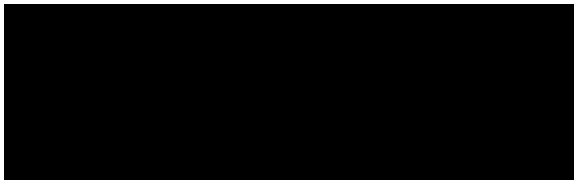
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the appeal will be dismissed as moot.

The applicant is a native and citizen of Mexico who entered the United States without a lawful admission or parole. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for obtaining a false alien registration card and social security card and using the documents to gain employment in the United States. The applicant is married to a U.S. citizen and he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse and child.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his U.S. citizen spouse and denied the application accordingly. *See District Director's Decision* dated November 18, 2002.

On appeal counsel states that the Immigration and Naturalization Service (now known as Citizenship and Immigration Services, [CIS]) misapplied the extreme hardship standard set forth in section 212(i) of the Act, and that the evidence in the record establishes extreme hardship to the applicant's qualifying relative.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The AAO has found that in order for an individual to be found inadmissible under section 212(a)(6)(C) of the Act, the fraud or willful misrepresentation of a material fact must be made to an authorized official of the U.S. government. Obtaining and presenting a false alien registration card and a social security card in order to gain employment from a private employer does not, in and of itself, render the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (Board) held that a respondent who purchased a fraudulent U.S. birth certificate, then used the birth certificate to

fraudulently procure a government issued social security number, and later used both documents to procure a government issued U.S. passport, which aided him in traveling in and out of the U.S. and in obtaining employment in the United States:

[C]learly [fell] within the purview of section 212(a)(6)(C)(i) of the Act. By fraud and by willful misrepresentation of a material fact, he sought to procure both "documentation" and "other benefits" under the Act.

The majority opinion provided no further clarification regarding their inadmissibility finding against the applicant. However, the concurring opinion written by Board Chairman, Paul W. Schmidt and Board Member, Gustavo D. Villageliu, made clear the Board's position on the issue of employment by stating that:

[T]he majority's opinion correctly notes that in purchasing the fraudulent birth certificate, using it to procure a fraudulent social security card, and subsequently using these documents to seek to procure a United States passport in order to travel into and out of the United States and seek employment, the respondent sought to procure both "documentation" and "other benefits" under the Act However, a small clarification is needed. The other benefits under the Act the respondent sought to procure are the right to travel with a United States passport pursuant to section 215(b) of the Act, 8 U.S.C. § 1185(b) (1994). The majority's language may be misinterpreted as suggesting that using the fraudulent passport to obtain employment is obtaining a benefit under the Act.

....

Although the use or possession of such document is punishable under section 274C of the Act . . . working in the United States is not "a benefit provided under this Act," and we have specifically held that a violation of section 274C and fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act are not equivalent.

In *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994), the Board of Immigration Appeals stated:

It is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for excludability under section 212(a)(6)(C)(i) of the act to be found.

In the present case, a review of the record reflects no indication that the applicant defrauded or made a willful misrepresentation to a U.S. government official when he bought a fraudulent alien registration card and social security card, or when he worked illegally. The AAO thus finds that the district director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. As such, the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

ORDER: The district director's decision is withdrawn and the appeal is dismissed as moot.